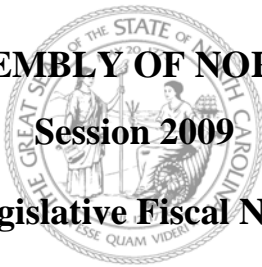


**GENERAL ASSEMBLY OF NORTH CAROLINA**



**Session 2009**

**Legislative Fiscal Note**

**BILL NUMBER:** House Bill 1637 (Third Edition)

**SHORT TITLE:** Modernize Precious Metal Business Permitting.

**SPONSOR(S):** Representatives Dickson and Samuelson

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2009-10</u></b>	<b><u>FY 2010-11</u></b>	<b><u>FY 2011-12</u></b>	<b><u>FY 2012-13</u></b>	<b><u>FY 2013-14</u></b>
<b>REVENUES</b>					
Local Law Enforcement	\$162,832+	\$149,328+	\$141,825+	\$134,688+	\$128,100+
Justice	*At least \$26,624 increase in revenues during FY 09-10. Potential increase in future fiscal years depending on the number of new hires and/or stores*. *				
<b>EXPENDITURES</b>					
Local Law Enforcement	*At least \$30,590 increase in expenditures during FY 09-10. Potential increase in future fiscal years depending on the number of new stores.*				
Correction	Indeterminate fiscal impact				
Probation	Indeterminate fiscal impact				
Judicial	Indeterminate fiscal impact				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Justice, Local Law Enforcement					
<b>EFFECTIVE DATE:</b> Effective October 1, 2009. However, a dealer that is required by the act to be licensed, and who is not required under the current law to be licensed, would not be guilty of engaging in the precious metals business without a license until January 1, 2010. This grace period is provided because there is a 30-day waiting period for issuance of a permit.					

## **BILL SUMMARY:**

House Bill 1637 amends the provisions governing the regulation of persons engaged in the business of purchasing precious metals as follows:

- Eliminates the 10% rule (exemption from licensing requirements for dealers whose second hand purchases of precious metals are less than 10% of their total purchases from the public).
- Clarifies transactions that are exempt from regulation.
- Exempts all pawnbroker transactions from regulation under the precious metals article.
- Increases the fee for a permit from \$10 to \$180 and increases the fee for registration of an employee from \$3 to \$10 with an annual renewal fee of \$3.
- Requires employees of dealers to consent to criminal history checks and provides that the person may not be employed by the dealer if the person refuses to consent or if the person has been convicted of a felony and has not had citizenship rights restored for at least 5 years.
- Exempts employees from registration if they are only involved in precious metals purchases incidentally to other job responsibilities and the transactions are overseen by a registered employee or licensed dealer.
- Requires a dealer who applies for a special occasion permit to provide a physical address in the State where purchased items are to be kept for the required hold period.
- Allows dealers to keep records electronically, but reporting would be in the manner authorized by the law enforcement agency. Provides that purchased items may not be sold or disposed of for a period of 7 days after a transaction is reported.

This differs from previous editions of the bill in that it reduces the permit fee from \$250 to \$180. It further provides that the permit fee includes the cost of the background check of the dealer. The bill requires a special occasion permittee to identify a physical address in this State where purchased items will be held for the required 7-day period. The bill would require that address to be located in the law enforcement jurisdiction in which the purchase is made. It also makes technical and stylistic changes.

*Source: Adopted from the summary done by the committee counsel to House Finance on July 16, 2009*

## **ASSUMPTIONS AND METHODOLOGY:**

Under current law, persons engaging in the business of purchasing precious metals from the public must obtain a permit from local law enforcement agencies and keep records of all transactions to be submitted to the law enforcement agencies on an on-going basis. The requirements currently apply to merchants whose purchases of precious metals from the public are 10% or less of his or her total purchases of secondhand items. Pawnbrokers are exempt from these requirements. House Bill 1637 amends these laws by eliminating the 10% rule and increasing the fee for a permit from \$10 to \$180 and requires that part of this fee be used to pay for the background checks of store owners. It also increases the fee for registration of an employee from \$3 to \$10 with an annual renewal fee of \$3.

According to the North Carolina Jewelers Association, there are around 859 jewelry retail outlets in the state. Each of these outlets engages, to some extent, in the buying precious metals from the public. Although current law requires most of these retail outlets to register with local law enforcement, in the past there has been the misconception in most counties that these outlets are exempt from permitting requirements. The only county that currently regulates jewelry retail outlets is Mecklenburg County. According to the Charlotte-Mecklenburg Police, there are around 54 of these outlets in Mecklenburg County. Therefore, with the exception of outlets in Mecklenburg County, the permit fee increase is the equivalent of a new fee. Due to current economic conditions, the Association expects the number of jewelry outlets to decline by 5% each year. Unfortunately, it cannot be predicted where this decrease will be

concentrated. This analysis assumes that none of the stores in Mecklenburg County will close. The revenue increase to local law enforcement will be equal to true fee increase multiplied by the number of stores paying the fee. This results in a \$154,620 revenue increase for FY 2009-10. The chart below summarizes the fiscal impact of increasing the precious metal permitting fee.

**HB 1637: Impact of Increasing the Permitting Fee**

Fiscal Year	Number of Retail Outlets	Revenue Increase
FY 2009-10	859	\$154,620
FY 2010-11	816	\$146,880
FY 2011-12	775	\$139,500
FY 2012-13	736	\$132,480
FY 2013-14	700	\$126,000

House Bill 1637 also increases the registration fee for an employee from \$3 to \$10 with an annual fee of \$3. It is not known exactly how many employees work at the retail jewelry outlets. Assuming that there is at least one employee at these outlets excluding the permit holder, there will be at least 859 employees in FY 2009-10. Mecklenburg County is the only county that currently registers these employees and therefore, employees located in this county will be charged the \$3 renewal fee in FY 2009-10. The remaining employees in the state will be charged the \$10 fee in the first year. The revenue increase to local law enforcement will be equal to the number of employees in the state multiplied by the registration fee. This results in an \$8,212 revenue increase for FY 2009-10. The chart below summarizes the fiscal impact of increasing the employee registration fee, assuming the same employees work at the outlets during the next five fiscal years.

**HB 1637: Impact of Increasing Employee Registration Fee**

Fiscal Year	Number of Employees	Revenue Increase
FY 2009-10	859	\$ 8,212
FY 2010-11	816	\$ 2,448
FY 2011-12	775	\$ 2,325
FY 2012-13	736	\$ 2,208
FY 2013-14	700	\$ 2,100

Current Law requires the owner of a retail jewelry outlet to have their background checked as part of outlet permit application process. Because only Mecklenburg County has been enforcing this law, background checks will need to be performed for all existing stores outside of this county. House Bill 1637 stipulates that the cost of the background checks must come out of the \$180 permit fee. This will manifest as an increase in expenditures for local law enforcement equal to the number of unlicensed stores multiplied by the \$38 background check fee. This results in a \$30,590 increase in expenditures in FY 2009-10. It is unknown how many new jewelry outlets will open in future years. This analysis assumes that the only stores that will remain open in FY 2010-14 will be existing establishments. Under this assumption, there will be no impact to local law enforcement during FY 2010-14. If new establishments are opened during this time period, there will be an increase in expenditures for local law enforcement.

## **Department of Justice**

The Department of Justice (DOJ) charges a fee of \$38 to perform each criminal background check. This bill calls for the background check fee for store owners to be included as part of the \$180 permit fee and not as an additional, separate fee. Employees, however, will be required to furnish their own background check fee. Of the \$38 fee, \$22 is forwarded to the Federal Bureau of Investigation (FBI) for a check of federal databases, and the remaining \$16 is retained by DOJ. Of this \$16, \$14 goes to a check of NC databases and \$2 is used for the processing cost associated with the request.

Current Law requires the owner of a retail jewelry outlet to have their background checked as part of outlet permit application process. Because only Mecklenburg County has been enforcing this law, background checks will need to be performed for all existing stores outside of this county. This will cause an increase in revenues for DOJ equal to \$16 multiplied by the number of stores currently without a permit. This results in a \$12,880 increase in revenues in FY 2009-10. This analysis assumes that the only stores that will remain open in FY 2010-14 will be existing establishments. Under this assumption, there will be no impact to DOJ during FY 2010-14. If new establishments are opened during this time period, there will be an increase in revenues to DOJ during FY 2010-14.

The bill also requires all individuals employed by dealers of precious metals to consent to criminal history checks. The number of applicable employees is not known. Assuming there is at least one employee at each precious metal outlet remain, there will be at least 859 employees subject to criminal history checks under this bill. This number multiplied by the \$16 retained by DOJ results in the revenue increase for FY 2009-10. This results in a \$13,744 increase in revenues in FY 2009-10. The number of new employees in future fiscal years cannot be predicted. This analysis assumes that the same employees will be retained by retail outlets during the next five fiscal years. Under this assumption, there will be no impact to DOJ during FY 2010-14. However, DOJ will experience a revenue increase during these years should these outlets choose to hire new employees in this time span.

## **Department of Correction – Division of Prisons**

The North Carolina Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Three sections of the proposed bill contain criminal penalties; the Sentencing Commission's analysis of these sections is shown below.

**Section 2:** This section amends subsection (b) of G.S. 66-165, Permits required, to provide that the following two types of persons “shall not be employed by” a precious metals dealer required to obtain a permit under G.S. 66-165(a): (1) persons refusing to consent to a criminal history check, or (2) persons convicted within five years prior to the date of application of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or similar offenses. Under G.S. 66-172, Penalties, a dealer who violates any provision of Article 25 (Regulation of Precious Metal Businesses) is guilty of a Class 2 misdemeanor.<sup>1</sup> However, because the new language is directed at persons who “shall not be employed by a dealer[.]” rather than providing that a dealer “shall not employ” certain persons, it is unclear whether Section 2 creates a new offense for dealers under G.S. 66-172. This analysis assumes that Section 2 creates a new offense.

---

<sup>1</sup> The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 66-172. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently resulted in convictions.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. *It is not known how many offenders might be convicted and sentenced under the proposed section.* In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentenced. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31<sup>st</sup> day at a rate of \$18 per day. Because the average active sentences for Class 2 misdemeanors are less than 31 days, the *State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.*

**Section 3:** This section expands the recordkeeping obligations of a merchant who purchases precious metals but is exempted from the permit requirement for a “dealer” under G.S. 66-166, Exemption from permits; record keeping under an exemption. Currently, exempted merchants are required to maintain a book with a description of each item of precious metal purchased and the date of transaction. (They must also preserve these records for a period of two years and must allow inspections by law enforcement at any time.) Section 3 would require exempted merchants to record a serially-numbered description of each transaction (in book or electronic form<sup>2</sup>) with the following information: the manufacturer’s name; the model number, serial number, and any engraved number or initial found on the purchased item; the date of transaction; the name, sex, race, residence, telephone number and driver’s license number of the seller; and the signature of the dealer/merchant and seller. If the seller lacks a valid, unexpired photographic identification card, the merchant would have to require two forms of positive identification to complete the transaction. Under G.S. 66-172, a dealer who violates any provision of Article 25 (Regulation of Precious Metal Businesses) is guilty of a Class 2 misdemeanor.<sup>3</sup> However, it is unclear whether a merchant granted an exemption under G.S. 66-166 is a “dealer” under subsection (1) of G.S. 66-164, Definition, for purposes of G.S. 66-172. To the extent that an exempted merchant is subject to criminal liability under G.S. 66-172 for violations of G.S. 66-166, Section 3 increases the potential for liability through more stringent recordkeeping requirements. This analysis assumes that Section 3 changes the existing offense in this manner.

AOC currently does not have a specific offense code for violations of G.S. 66-172. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

*It is not known how many additional convictions may result from the proposed broadening of the current statute.* In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 misdemeanor convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense *would not be expected to have a significant impact on the prison population.* The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31<sup>st</sup> day at a rate of \$18 per day. Because the average active sentences for Class 2 misdemeanors are less than 31 days, *the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.*

---

<sup>2</sup> Section 4 amends G.S. 66-169, Records to be kept, to allow licensed precious metals dealers to maintain the required records of their precious metals transactions in either a paginated, bound book or in an electronic database that prevents deletions, tracks all modifications, and allows for electronic signatures. It further allows electronic filing of these records with the local law enforcement agency, as required by G.S. 66-169(d). Currently, the statute does not provide for electronic recordkeeping or filing.

<sup>3</sup> See Footnote 1.

**Section 5:** This section amends G.S. 66-170, Items not to be modified, to provide that an item of precious metal purchased by a licensed dealer may not be disposed of, changed in form, or removed from the licensed premises before the earlier of (1) seven days after the date that the record of the purchase is electronically reported to law enforcement under G.S. 66-169 or (2) 30 days after the transaction. Currently, the waiting period is five days from the purchase date. Section 5 thus increases the potential for violations of G.S. 66-170 by precious metals dealers by lengthening the waiting period before the dealer may engage in certain activities. A dealer who violates this provision is guilty of a Class 2 misdemeanor under G.S. 66-172.<sup>4</sup>

*It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2007-08, 20% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 10 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 misdemeanor convictions for this proposed offense would not be expected to have a significant impact on the prison population. The Department of Correction (DOC) reimburses county jails for misdemeanants, starting on the 31<sup>st</sup> day at a rate of \$18 per day. Because the average active sentences for Class 2 misdemeanors are less than 31 days, the State would incur no costs for convictions under the proposed bill. The impact on local jail populations is not known.*

#### **Department of Correction – Division of Community Corrections**

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.<sup>5</sup>

General supervision of intermediate and community offenders by a probation officer costs DCC \$2.37 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$8.43 to \$16.71, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$16.71 for the initial six-month intensive duration, and \$2.09 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Because there is no data available upon which to base an estimate of the number of convictions that will be sentenced to intermediate or community punishment, *potential costs to DCC cannot be determined.*

#### **Judicial Branch**

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

---

<sup>4</sup> See Footnote 1.

<sup>5</sup> DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

AOC staff reports that this proposed legislation creates a new offense and therefore they are *unable to predict the number of charges that may result from this bill*. This bill may create a new Class 2 misdemeanor offense due to changes in the language in Section 2 regarding employment by a dealer. This bill expands an existing Class 2 misdemeanor offense by expanding the recordkeeping obligations of a merchant who purchases precious metals but is exempt from the permit requirement for a dealer. It also extends the waiting period for disposing of or otherwise removing precious metal items from five to seven days, thus increasing the potential for violations. Violation of the waiting period is also a Class 2 misdemeanor.

For every new Class 2 misdemeanor charge, the cost to the court ranges from \$83 to \$161. Indigent defense costs for indigent misdemeanants average \$225. In FY 2007-08, a typical misdemeanor case took 87 days to dispose in District Court. Any increase in judicial caseload without accompanying resources can be expected to further delay the disposition of cases.

**SOURCES OF DATA:** NC Jewelers Association, Charlotte-Mecklenburg Police, NC Sentencing and Policy Advisory Commission, Administrative Office of the Courts

**TECHNICAL CONSIDERATIONS:** None

**FISCAL RESEARCH DIVISION:** (919) 733-4910

**PREPARED BY:** Marjorie Rutherford, Danielle Seale

**APPROVED BY:** Marilyn Chism, Director  
Fiscal Research Division

**DATE:** July 21, 2009



**Signed Copy Located in the NCGA Principal Clerk's Offices**